1951. K File No. O. Trusts | 51

Legal DEPARTMENT

A. BRANCH

SVB 21/6

Subject:— Opinions under the Trusts Indian Act 1882

f-37. E

File No. O. Trusts | 51

Std. Sectt. Slip 24 B a.

23-A.

CONTENTS.

Legal Department File No. O. Trust /51

Sr. No.	R.I./O.No.	Subject	Pages
		Indian Trusts Act, 1882.	
1.	452 8-1-51	Whether there is any legal objection to naming the entire new building of the Elphinstone College after the late Mr. Justice Telang	1-3
2.	25414 29-12-50	1323 20-1-51 Whether the title to the Kshatra Jagadguru Peeth can be governed by Wanton Rules.	4-6
3.	23492 28-11-50	1573 25-1-51 Appointment of Trustees of the late Shri Vithoba Vasudeoji Zaoba Charities	7-12
4.	2072 3-2-51	Whether tere would be any legal objection to the official Trustee continuing the investmentin Rangoon Municipal Debentures which were authorised securities.	13-14
	23472 28-11-50	1529 24-1-51 (i) Whether the Govt. are legally bound to pay the amount of interest earned annually to the University of Paris. (ii) Whether the donation was a Trust.	15-18
	5726 2-4-51	Committee ofthe National Sport Fund. Whether to vest the funds in the Official Trustees.	19-20

CONTENTS.

Legal Department File No. O. Trust /51

Sr. No.	R.I./O.No.	Subject	Pages
		Indian Trusts Act, 1882.	
1.	452 8-1-51	Whether there is any legal objection to naming the entire new building of the Elphinstone College after the late Mr. Justice Telang	1-2
2.	25414 29-12-50 / 1323 20-1-51	Whether the title to the Kshatra Jagadguru Peeth can be governed by Wanton Rules.	3-6
3.	23492 28-11-50 / 1573 25-1-51	Appointment of Trustees of the late Shri Vithoba Vasudooji Zaoba Charities	7-12
4.	2072 3-2-51	Whether tere would be any legal objection to the official Trustee continuing the investmentin Rangoon Municipal Debentures which were authorised securities.	13-14
	23472 28-11-50 / 1529 24-1-51	(i) Whether the Govt. are legally bound to pay the amount of interest earned annually to the University of Paris. (ii) Whether the donation was a Trust.	15-18
	5328 2-4-51	Committee ofthe National Sport Fund. Whether to vest the funds in the Official Trustees.	19-20

Contents.

Sr No	D.F.No.	Subject	Pages.
7	5590 6-4-51	Whether there is any legal objection to the necessary instructions being issued to the Collector of Surat to discharge National Savings Certificates and to invest the proceeds in the Tapti loans.	21-25
8.	251076 29-12-50 5283 3-4-51	Whether D.L.D. may continue the management of the estate of Shri Vedaring Dada, Kotmalgri pending L.D. taking on the work of management of temples under the Hon. Pub. Trust Act.	25-26
	6444 - 29-4-51	Whether a trust for the development of physical culture will be valid charitable trust. Whether a society can be formed for this purpose and Govt. can be a member of such society.	27-28
	7510 12-5-51	Whether there is any objection to the closing down of S.D. VIII from the next year if the Rampa Forest Central School [illegible] 'Kelvan' Mandal is not willing to take over the control of secondary School.	29-30
11	6812- 30-3-51	7438 - 10-5-51	The chief of Jaisalmer's Educational and charitable trust whether the conditions subject to which the trusts were created offend the provisions of the constitution	31-34
12	7906 - 17-4-51	8828 - 20-4-51	Whether there is any legal objection to pay the amount due to Aborigines of Hasdeo Bango private forests after deducting the costs and other expenses due under the Indian Forest Act	35-43

CONTENTS.

Sr. No.	R.I No & No	Subject	Pages.
13	10190 - 23-3-51 / - 19507 19-7-51	Cattle Breeding Fund Whether the terms and conditions on which loans are proposed to be given are in order.	43-46
14	796 - 2-2-51	Indian Trust Act as amended by Acts of 1928 and 1929 Investments authorised there under	47-48
15	Ministy of Finance - Notifi.-No. 7(1)-Bp51 dt. 22-1-51	Ref Ten Year Treasury savings Deposits.	49-52 (not copied)
	- 15310 1-3-51	Treasury Saving Certificates Whether these are Govt. Securities and whether it would be legally permissible for the Administrator General and Official Trustee to invest trust money in these certificates	53-54.
16	16526 - 9-9-51 / 15283 5-10-51	Whether Govt. can with the consent of the donor, redonate a part of the donation already accepted by it to a private body for making any deficit, past or future on running its private schools	55-58
17	2835 - 24-2-51 / 5843 5-4-51	Whether a new order creating a public trust with the charity Comsr. as the Chief Trustee can be made applicable to the Kolhatra Jagadguru Peeth	59-62
18	- 12419 4-12-51	Whether it is not open to the Bom. Govt. as the successor of the Kolhapur State to resume the Grant on the ground that the condition on what it was made has been broken by the guarantee.	63-64.

MM 9/6/56

SMK 4/6

Opinion of the B.I.A.

While sanctioning the sale of the old buildings of the Elphinstone College hostels, the High Court had directed the construction of a new building out of the sale proceeds upon conditions that a portion of the new building costing approximately a sum of Rs.57,000 should be named after the late Mr. Justice Telang and also that Government should holdthe new structure of the Telang Memorial Wing on the same terms and conditions on which the Telang Memorial Wing of the old hostel building was held.

2. There can be no legal objection to naming the entire new building after the late Mr. Justice Telang as proposed. However, lest it be said that the entire building becomes impressed with the Trust, the Resolution sanctioning the proposal should make it clear that the proposal is accepted without in any manner accepting the liability as a Trustee in respect of portions of the building other than that costing approximately a sum of Rs.57,000.

3. On the expediency of the proposal the B.I.A. would like to add that it is well-known that Mr. Justice Telang was instrumental in securing for the Elphinstone College that portion of the old hostel which was called the old wing and also made an endowment for the Gymkhana tennis courts. The other wing was named after him, as it was built out of collections made to commemorate his memory. In these circumstances it would be quite appropriate to name the entire building after him especially as it is being opened in the year of the centenary of his birth. To conform with the old nomenclature, the entire building may be called the Telang Memorial Hostel.

Contd.

P.M LAD.

Remembrancer of Legal Affairs.

S.R. to E.D. No. 433 ; dated 8th January 1952.

MI

SC dated 23-5-196.

R.I. No.28414 dt. 29-12-50

Submitted.

Please see R.D. note at p.19 ante and R.L.A.'s opinion No. 14089 dated 6-10-50 where it has been held that as the Kshatra Jagadguru Peeth has been declared by C&J.Senior Division, Belgaum a private trust and not a public trust the provisions of the Bombay Public Trusts Act, 1950 will not apply. P.& S.D. has taken the view that as the Peeth is an ancient one it will come within the purview of the Watan Rules. R.D. is doubtful whether the title to this Peeth can be governed by the Watan Rules. The R.L.A. is requested to advise in the matter.

[redacted]

SC dated 29-5-'50.

Office of the R.L.A.

Religious Endowment.

This appears to be a religious grant and not a Watan and the Rules contained in the order of the grant as stated by the Collector in his letter at page 15 ante will have to be treated not as Watan Rules but as conditions of the grant.

P. M. LAD.

Remembrancer of Legal Affairs.

U.O. to R.D. No. 1328 dated the 20th January 1951.

Subd. for signature.

PL. also see pages 99 to 108 post.
R.L.A.

MM

SC dated 29-5-'50

No. HC/186/1198,

OFFICE OF THE ACCOUNTANT GENERAL
QUEEN'S ROAD.

Bombay, 27th November 1950.

FROM

Shri V.N. ADAVI?
THE ACCOUNTANT GENERAL,

HIGH COURT,
BOMBAY,

To

The Remembrancer of Legal Affair -
and Secretary to Government Legal
Department,

BOMBAY.

RE:- Appointment of Trustees of the late Shri Vithoba Vasudeoji Kaoba Charities.

Sir,

I am to state that certain securities were deposited with this office pursuant to an order of the High Court, Bombay, dated 9th August 1880 in Suit No. 421 of 1878 (Certified copy enclosed for reference and return) which interalia directs the Accountant General to pay interest on these securities to the three trustees mentioned in the order or other the Trustees for the time being.

2. As vacancy occurs a new Trustee is appointed by the Surviving Trustees by a deed of appointment which when registered with the Sub-Registrar of Bombay is accepted as valid and payment of interest made on the receipt of three Trustees though there is no mention in the High Court order dated 9th August 1880 referred to above, about the power of the Surviving Trustees to appoint a new trustee. The last such appointment of a new Trustee was made on 7th February 1938, a copy of which is enclosed for-reference and return.

3. One of the Trustees mentioned in the said deed of
of appointment dated 7th February 1938 viz. Shri Vasudeo

Maravan Zaoba died on 18th August 1950 and the two Survivring Trustees viz.R.V.Z aoba and R.N.Desai have appointed Rao Saheb C.B.Velkar as a new Trustee in his place and though a deed of appointmentof te new Trustee has yer to be executed, they have requested for the payment of interest on the Securities on the strength of the death certificate of thedeceased Trustee and the consent letter of the new Trustee. Their letter dated 30th October 1950 together with its accompaniments as noted in the margin are sent herewith for perusal and return.

1. Death Certificate
2. Consent letter
3. Form of receipt

4. I am, therefore, to request you to kindly advise this office as to (1) whether it would be in order and lawful for this office to accept the appointment of the new Trustee by a Deed of Appointment executed on thee lieus of the one dated7th February 1938 referr referred to above and to make the payment of interest on the strength thereofor whether the Trustees should be asked to obtain a frish High Court Orders approving the appointment of the new Trustee every time such a new appointment is made and (2) if the deed of appointment is sufficient whether it would be legally permissible to make payment in advance as requested by the two SurvivingTrustees pending the execution of such a document.

5. The favour of an early reply is requested.

Yours faithfully

V.N.Mavi

ACCOUNTANT GENERAL.

No. 1573

Office of the

Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 25th January 1951.

From

Shri P.M.Lad, I.C.S.,
Remembrancer of Legal Affairs,
Bombay.

To

The Accountant General,
High Court, Bombay.

Subject: Appointment of Trustees of the Inte
Shri Vithoba Vasudeoji Kabbe Charities.

Sir,

With reference to your letter No. HC/180/1193 dated the 27th November 1950 on the subject noted above I have the honour to send herewith a copy of my opinion in the matter.

The papers ofthe case are also returned herewith.

Yours faithfully,

P.M LAD.

O.C.
Remembrancer of Legal Affairs.

MM

50. dated 30-3-50.

Office of the R.L.A.

It appears that, under clause 21 of the will of Withoba Wasseddew, if any one of the trustees vacates his post by death or change of religion, etc., the remaining two trustees can fill the vacancy by appointing a third trustee. The High Court order in suit No. 421 of 1878 does not restrict this power of the trustees and the words "trustees for the time being" would mean the trustees who have been originally appointed under the will or subsequently appointed on any vacancy having occurred by any of the reasons stated in the will. Consequently, it is competent for the two existing trustees to fill the vacancy by appointing a third trustee and no directions of the High Court for the purpose are necessary. It would, therefor , be in order and lawful for the Accountant General to accept the appointment of the new trustee by a deed of appointment executed on the lines of the one dated the 7th February 1938 and to make the payment of interest on the strength thereof to the trustees.

2. The deed of appointment appears to be sufficient under clause 21 of the will and if the Accountant General is satisfied about the appointment of the third trustee and his acceptance of such appointment, there appears to be no legal objection to making the payment in advance as requested by the two surviving trustees pending the execution of the necessary document for the purpose.

P.M.LAD.

Remembrancer of Legal Affairs.

MM
50 dated 30-5-'50. Sent to Accountant-General No. 1573 dated 25-1-51.

Office of the R.L.A.

Since the Rangoon Municipal debentures were authorised securities when they were bought in the year 1938, they will have to be considered as authorised securities and there would be no legal objection to the Official Trustee continuing the investment in these securities, and the official Trustee would not be personally liable for retaining these securities when he had brought it to the notice of the Directors of the school about the advisability of converting the investment. The Official Trustee may bring to the notice of the Directors of the School about the desirability of selling these Rangoon Municipal debentures at a fairly reasonable price, if he is convinced that they cannot be sold at the net price at par value as directed by the Directors of the School. If the Directors of the School are adamant and still insist thatthey should be sold only at par value, the Official Trustee may apply to the Court for directions in the matter.

P M.LAD.

Umbrancer of Legal.

U.O.to Official Trustee of Bombay No. 3079
dated 3rd February 1951

Submitted for signature.

SC dated 30-6-'56.

L.D.R.I.No.2372 dated 20-11-50.

Submitted with reference to the note of the Education Deptt. dated 20-11-50 at p.4 ante read with their note dated 31-10-50 at p.2 ante, which gives the facts of the case.

The facts of the case may be summarised as under:-

His Highness the Maharaja Gaekwar of Baroda had donated a sum of £.2000/- to "Institute de Civilisation indiennes" at the University of Paris vide Huzur Order No.106/8 dated 25-4-1928 at p.38 in the file No. 902 - Education Deptt. below. The order had directed among other things that the interest on this amount should be utilized for the following purposes:-

(a) Helping students preferably Indian who are prosecuting regular studies in Paris in any subject relating to Indian Civilisation and Culture;

(b) Helping the printing expenses of Essays preferably those incurred by the students mentioned above; and

(c) Subsidising any kind of research culture.

In pursuance of this order of Huzur the sum of Rs.30,000/- being equivalent of £.2000/- was invested in 3% conversion loan 1946. The amount of interest used to be remitted every year in August to the University of Paris. Since 1940 France being an occupied country, the interest on the Govt. holdings was kept in abeyance. The interest thus held in abeyance was put in the fixed deposit account with the Bank of Baroda Ltd., Baroda, and was subsequently renewed from

time to time. Later on in 1947, under the orders of late Baroda Govt., the accumulated amount of interest of Rs.6743-6-8 was paid to the University of Paris in 1947.

Since 1947 no further payment out of the accumulated interest of Rs.6349-1-6 is made to the University and this amount stands to the credit of the Fund this day. In support of the facts stated above please see the letter dated 27-7-50 of the office of the Deputy Accountant General at pp.21-22 in the file below.

The report of the Rector of the University of Paris dated 23-6-50 regarding the disbursement of the amount of interest remitted to the University may please be found at pp.19-20 in the file below.

The Education Deptt. at p. 3 ante is of the opinion that in terms of the Huzur Order No. 195/6 dated 25-4-1930 at p.23 in the file below the donated property is held by the Govt. in trust for a charitable purpose and it therefore appears that the Govt. is bound to see that the annual income from this Fund is utilised in terms thereof. It will, not, therefor be open to the Govt. not to pay the annual interest to the University of Paris as provided for in the Huzur Order, consequent upon the budgetary position of theState. The following questions have been referred to the A.L.A. for his opinion:-

(i) Whether the Govt. are legally bound to pay the amount of interest earned annually to the University of Paris.

(ii) Whether the donation was a trust.

850 dated 30-5-'56.

Office of the R.L.A.

The donation in question amounts to the creation of a public trust by the late Maharaja Sayajirao Gaekwar in 1930 for the purposes mentioned in the Baroda Government's order at page 83 of the linked file. That being the legal position, the fact that Baroda State Government is now succeeded by the Bombay Government will not affect the trust, and it will not be permissible to the Bombay Government to repudiate the trust or not to honour it. Besides having regard to the facts that the trust was created long before the merger and for a laudable purpose and the foundation being associated with the memory of late Sayajirao, it will also be inadvisable to disown the liability. Also, the amount of the endowment is small and is separately held and invested in authorised trust securities.

P M LAD.

Remembrancer of Legal Affairs

U.O. to E.D.No. 1529 , dated the 26th January 1951.

Submitted for signature.

RM
SC dated 30-6-'50.

Office of the R.L.A.

The other alternative would be to vest the Funds in the Official Trustee who would hold the same upon trust to hand over the income and at the direction of Government the corpus of any part thereof to the Committee of the National Sports Fund for being applied to its object. But the course suggested in R.L.A.'s opinion at page 61 ante is better.

30/3

O.O.

Remembrancer of Legal Affairs.

U.O. to H.D., No. 5220, dated the 2nd April 1951.

Submitted for signature.

Bombay State Aquatic Association

MK

SC dated 30-3-'56.

Office of the R.L.A.

There is no legal objection to the necessary instructions being issued to the Collector of Surat to discharge National Savings Certificates and to invest the proceeds in the Tapti loan as directed by G.S. at p. 131. The Tapti loan notes are authorised trust investments and no legal complications will arise by reason of such conversion.

6/4

Remembrancer of Legal Affairs.

Issued
U.O.to P. & S.D. No. 5590, dated the 6th April 1951.

SC dated 20-6-'50.

R.I.No. 25407 dt. 29-12-56.

Submitted.

The estate of Shri Kedarling Wadi Ratnagiri was under the management of the Khasgi Deptt. of His Highness the Maharaja of Kolhapur for a longtime. After the demise of the late Rajaram Chhatrapati in the year 1940 the management of the estate was transferred to the court of wards by the Regency Council and the estate continued to be under its management till 1947 when the council resolved under item R.,E.D. No.307 dated 27-10-47 that the estate should be transferred to the Khasgi Department. The estate was accordingly transferred to the Khasgi Deptt. On the eve of the merger the Administrator directed that it should be handed over to Govt. for management. But the estate was handed over to the Taluka Panchayat (D.L.B.)Kolhapur R.D. stated that although the responsibility for management of the temples cannot be undertaken by D.L.B. The D.L.B.Kolhapur has continued to do that work according to old practice. Pending settlement of Inams in the merged states by legislation and the L.D. takes up the work of management of temples under the Bombay Public Trust Act, 1950, R.D. has proposed that the D.L.B. may continue to look to the work. The L.S.G. & P.H.D. is requested to reconsider the matter and the papers are shown to that Deptt. through L.D.

[redacted]

SC dated 30-6-'56.

Opinion of the R.L.A.

In view of the decisions of the Courts, although a t trust for the encouragement of sports merely as a part of amusement may not be held to be a valid charitable trust, a trust for the development of physical culture, and with that end in view, for the encouragement of athletics and games, will be a valid charitable trust. A society under the Societies Registration Act, 1860, can be formed for this purpose and Government can be a member of such Society. It is understood that the Childrens Aid Society and the Released Prisoners Society are institutions of that nature.

20/4

Remembrancer of Legal Affairs.

U.D. to H.D. No. 04444 , dated the 03rd April 1951

See also RLA's opinion No. 10734/A
dated 11-11-1952.

[illegible]

SC dated 20-6-'50.

Legal Department.

The Dhana Punasan Central School Kelvani Mandal requested the Maharaja of Idar to continue the primary schools at Dhana and Punasan upto standard VII, to construct a new buildingfor housing standard VIII upwards and agreed to contribute half the cost of the building. The Idar State agreed to spend theother half of the amount towards the cost ofthenew buildings The building, it appears, was accordingly constructed. There is nothingto show in this undertaking by the Idar State that the State had agreed to run the secondary school directly under Government auspices. There is, therefore, no objection to the closing down of standard VIII from next year if the Mandal is not willing to take over the control of the secondary school. However, the buildingis a trust property impressed with the trusts created by the conditions of the donations and Government will not be entitled to use the building in a manner inconsistent with the terms of the donation without theCourt's sanction.

O.S.

Additional Secretary to Government.

U.O. to E.D. No. 7516, dated the 13th May 1951.

MM

50 dated 29-5-'50.

R.T.No. 6313 dt. 30-3-51

Submitted.

Please see R.D. noted at pp.3-7 ante. It appears that the Chief Ichalkaranji had created a trust known as "the Chief of Ichalkaranji Educational and Charitable Trust". Under certain items of the trust deed certain funds were created earmarking prizes and scholarships for the students of a particular community or a branch of a particular family. The question now raised for consideration of the R.L.A. are whether the conditions subject to which the trusts were created offend the provisions of the Constitution or the present policy of Govt.

p 21 ante

Note. T/S

Addl Secy.

SC dated 30-5-'50.

Legal Department.

Throwing open scholarships to all communities.

Although the present policy of Government is not to discriminate on grounds of religion, race, caste, sex and place of birth still the conditions of trusts already created and which are being administered by Government for specific objects cannot be altered, for, the trustee is bound to fulfil the purpose of the trust and to carry out the directions of the author of the trust (see G.L.A.'s opinion No.8306, dated 1-9-48) and it would not be possible for the trustee to get those objects of the trust relaxed even by applying to the Court for throwing open these scholarships and prizes to all communities (see G.L.A.'s opinion No.6304, dated 3-7-48). The Bombay Public Trusts Act, 1950, however has to some extent widened the doctrine of cypres. Under section 50 of that Act the Courts, on being moved, may in circumstances specified in section 53(c) apply trust funds to purposes other than those for which they were endowed. It is, however, very doubtful if the Courts under section 50 would consent to throw open communal scholarships to all persons. Also attention is invited in this connection to Charity Commissioner's opinion dated 14-12-1950 as regards these Ichalkaranji funds given to the B.D. (a copy of which is appended herewith).

O.O.

Additional Secretary to Government.

G.R. to E.D. No. 7432, dated the 10th May 1951.

[illegible]

50 dated 30-5-'50.

R.I.No. 7990 dated 17-4-51G

Submitted with ref. to the A. & F.D. note dated the 14th April, 1951.

This is a reference regarding representations of Thakores of Nawadi and God Doriad requesting for payments of dues from their private forests, pending the final action Govt. may take regarding these forests.

pp. 15 to25

2. The facts are briefly these:

It appears that the forest of Thakores of Nawadi and God Doriad who executed Agreements for merger of their estates in the form kept with this, are under Government management since 1st March, 1949 though the management of these forests have not been assumed in accordance with the procedure laid down in the Indian Forest Act,1927 or the rules framed by the State Govt., for carrying out the provisions of the Act. The Thakores have been assured that their rights to the forest would remain inviolable(please see portion 'A'in A.& F.D.note dated the 16th Jan. 51). Separate accounts are being maintained in respect of the revenue which is being realised from these forests. The money which is to be paid to the Thakores is lying for more than two years with Govt. When the Private forests are taken over under Govt. management, the procedure will be that net profits, if any, arising out of the management of the private forests will be paid to the owners, under sub-section (2) of sec. 36 of the Indian Forest Act.

Slip B

after the aggregate cost incurred on the Pl. see rule
scheme is defrayed and judi, if any, due to
Govt. is recovered. In the A. &F.D. note it
is assumed that since the Thakores have not
challenged Govt.'s action in taking the forests under its
management without recourse to the procedure prescribed
under I.F.Act, there may not be any legal objection to
work out the costs of management of these forests and pay
the amount due to the owners. It is observed thatif the
Thakores accept the amount it will strengthen the Govt.'s
action in taking over the forests, which is without a legal
cover as observed by B.L.A. in his opinion No. 12640 dated Slip
the 4th Sept. 1950.

4. B.L.A. is requested to advise whether there is any legal
objection to pay the amount due to the owners of these private
forests after deduction the costs and other expenses due under the
I.F.Act.

[redacted]

30 dated 30-6-'50.

Legal Department.

Indian Trust Act, 1882 Sec. 94.

In his last opinion No. 12040, dated 4th September 1950 the D.L.A.opined that since the right of the Thakores to the forest is conceded by Government, Government's management of the forest would be that of a trustee and Government will have to pay the Thakores the net profits. Government's management being in the nature of a constructive trust under section 94 of the Trusts Act, 1882 there would be no legal objection to paying the amount due to the Thakores after deducting out of the total receipts of their forests the reasonable costs and other expenses of management, and not the costs and other expenses which would have been chargeable under the Indian Forest Act had the management been assumed under the Act.

Additional Secretary to Government.

Submitted for signature o/c

Addl. Secy. 20/7

U.R. to A. & F.D.No. 0822 dated the 28th April 1951.

SC dated 30-5-'50.

L.D.& I.No. 10190/51

23/5/51

Submitted with ref. to A.& F.D. note at page 65. A fund called 'Cattle Breeding Fund' was raised from donations from the public in the Savanur State. There is a balance of Rs.10881-1-2. No rules regarding the administration of this fund were framed. As ascertained from the Ruler himself the object of this fund was to provide stud bills of Amrit Mahal breed to Savanur and each of the villages of Savanur State. It is proposed to utilise the funds for advancing loans to agriculturists of Savanur State on terms and conditions recommended by Director Animal Husbandry and Veterinary Science, Poona. The case is referred to this Deptt. for advice whether the terms conditions on which loans are proposed to be given are in order.

p.35

p.35

pp.57-59.

Mf

SC dated 30-5-'51.

Local Department.

Cattle breeding Fund.

Savanur.

The fund will have to be administered as a trust fund. Considering the smallness of the fund and the purpose for which it is to be utilised i.e. granting of loans it does not appear necessary to take action under the Charitable Endowments Act and frame any scheme. An Ad hoc scheme as proposed would be sufficient. The terms and conditions of the loan appear to be in order.

o/o

Additional Secretary to Government.

U.R. to A. & F.D. No., 10807, dated the 10th July 1951

SC dated 30-5-'52.

(47)

OFFICE OF THE ADMINISTRATOR-GENERAL OFFICIAL TRUSTEE,

"High court Extension," 1st Floor ,Fort:

BOMBAY, 31st January 1951.

No. AG/160 of 1951.

ESTATE:

From

The ADMINISTRATOR-GENERAL OF BOMBAY OFFICIAL TRUSTEE

To

The Remembrancer of Legal Affairs,
Legal Department,
BOMBAY.

Subject:- Indian Trusts Act 1882 as amended by Acts of 1908 and 1916 Investments authorised thereunder.

Sir,

The Government of India have recently issued a Schemes of Ten Year Treasury SavingsDeposits giving a b better rate of interest in addition to exemption from Income Tax.

I desire to make investment in the said Treasury Saving Certificates on behalf of several trusts and estates under my management for benefit of several persons including minors and charitable institutions with a view to get better interest.

Please therefore let me know whether the said Treasury Saving Deposits should be considered as authorised Securities under the Indian Trusts Act.

Yours faithfully,

ADMINISTRATOR GENERAL &
OFFICIAL TRUSTEE, BOMBAY.

M dt.30-3-'51.

OFFICE OF THE R.L.A.

Under section 20(a) of the Indian Trusts Act, 1882, trust money can be invested in promissory notes, debentures, stock of other securities of any State Government or of the Central Government. Treasury Saving Certificates are not promissory notes, debentures or stocks of the Central Government. "Government Security" as defined insection 2(a) of the Indian Securities Act, 1920 means promissory notes (including treasury bills), stock certificated, bearer bonds and all other securities issued by the Central Government or by any Provincial Government in respect of any loan contracted either before or after the passing of this Act but does not include a currency note. Government securities are transferable by endorsement (see section5). Treasury Saving Certificates are not issued in respect of any loan contracted by Government nor are they transferable. Consequently, these certificates are not Government Securities and it would not be legally permissible for the Administrator General and Official Trustee to invest trust money in these certificates.

o/c 31/7

Remembrancer of Legal Affairs.

U.O. to the Administrator General & Official Trustee, Bombay No. 12910, dated the 1st August 1951.

Submitted for signature.

MM

50 dated 30-8-'56.

L.D.R.I.No. 16528 dated 9-8-51.

Submitted with ref. to the note of the S.D. at p.34 ante

The facts of the case may be briefly stated as under:-

Shri Ranbirsinh, ex-Dewan of Combay State donated a sum of Rs.15000/- on 3-1-1948 for some cause of public service and utility such as Mahatma Gandhi's fund or for being donated to an institution like Vallabh Vidyanagar or any local institution in the State in the discretion of the Ruler. In this connection please see the letter dt. 3-1-1948 of Shri Ranbirsinh, ex-Dewan at p.33 ante and the letter dated 23-3-51 of the Collector of Kaira at p-31 ante. The Ex-Ruler of Combay State accepted the same donation and issued a notification No. 183 dated 3-6-49 and left the amount for utilisation in some public cause at the choice of "Successor Government" vide p.39 ante. The amount in question was thus credited as deposit and included in the general balance of the State at the time of integration on 10-6-1948. Shri Ranbir Singh in response to a request from Mamlatdar of Combay, expressed that a sum of Rs.5000/- should be earmarked for expenditure on primary schools and the balance of Rs.10,000/- should be invested as a permanent endowment fund and the interest thereon utilised by Govt. in its own discretion for the propogation of the Hindi Language. Please see p.45 ante in this connection. Shri Ranbirsinh has since modified his above proposal to this extent that he now wished Rs.10,000/- to be utilised for the distribution of books to poor and middle class school boys. In this case please see p.40 ante. The

Administrative Officer, Kaira District School Board, Nadiad, in his letter dated 5-7-51 has stated that it would not ultimately be considerably helpful to the Board in the present day financial stringency to hand them Rs.5000/- for the opening of primary schools in Bhal area. The Board will not be able to meet its recurring liability. In preference to the above it is proposed by him that Rs.15000/- be handed over to Cambay Taluka Nalavani Mandal for opening private primary schools in the villages having population less than 700 persons. The Mamlatdar, Cambay is the Chairman of this Mandal and thus there is no possibility of mis-use of funds. The chief condition wouldbe that only the interest accrued on that amount is to be utilised by the Mandal. The P.D. does not agree to opening additional schools for it would mean recurring expenditure for Govt. The amount may therefore be reconated to a private body. The ultimate opinion appears to be that the first necessity is of schools and as the Govt. is not in a position to open new schools, so the donation or part of it may be usefully employed in aiding voluntar y schools that are already being run by private bodies. The papers have been sent to the A.L.A. for advice as to whether Govt. can in the circumstances of this case, with the consent of the donor, re-donate a part of the ₹ donation already accepted by it to a private body for making any default past or future on running its private schools.

MM

50 dated 30-6-'56.

~~(57)~~

Legal Department.

Seen and returned.

The view taken by the Secretary, Education Department, is correct.

Additional Secretary to Government

U.O. to E.D., No.15033, dated the 8th October 1951

~~121~~

50 dated 30-6-'50.

~~(50)~~

R.I.No. 3935 dated 24-2-1951.

Subd.

Please see B.L.A.'s opinions No. 14080 dated 6-12-1950 and No. 1828 dated 20-1-1951 and R.D.note. R.D. states that there cannot be a private trust as the property held in trust has not been dedicated by private individual or individuals and that the former Govt. was the chief donor who made the grant which is of a religious nature and this Govt. being the successor Govt. has to take steps for the better management of the Peeth. R.D. further states that eventually there has been a breach of the condition subject to which the religious grant was made and as such the original order regarding the grant can be cancelled by this Govt. and issue a new order creating a public trust with the Charity Commissioner as the Chief Trustee so that the Bombay Public Trusts Act, 1950 can be made applicable to this Peeth. The B.L.A. is requested to advise whether this course is feasible and if not to suggest the lines on which action can be taken in this case.

p.21 ante

Mf

50 dated 30-6-'56.

(61)

Legal Department.

From the record it appears that in a suit filed in the court of Civil Judge, Senior Division, Belgaum it has been held that the Peeth is a private trust. If so, it is necessary to perse the copy of the judgment as also of the grant and all other papers connected with establishment of the Peeth before any opinion can be expressed.

R To.

for Additional Secretary to Government.

U.O. No R.D.No.5342, dated th e 3rd April 1951.

Subd. for signature.

[redacted]

50 dated[redacted]-5-'50.

Office of the R.L.A.

In R.L.A.'s opinion No.1328 dated 20 January 1951 it was stated that the grant in this case was religious and not a watan. The R.D. is inclined to doubt this view and has raised the question whether it is not open to the Bombay Government as the successor of the Kolhapur State to resume the grant on the ground that the condition on what it was made has been broken by the grantee. It is contended that the grantee is mismanaging the Peeth or the Gadi and has not been carrying out the religious duties attached to the Peeth. This view is entirely wrong. It is clear from the terms of the Sanad produced in their papers that the grant was made to the original grantee in view of his position as the Head of the Peeth. In the Sanad it is clearly stated that the grant is for the maintenance i.e. yogakshema so that the Peeth should be maintained in a good condition and there should be a spread of knowledge among the masses. The grant in a spread of knowledge among the masses. The grant in the present case is similar to that which was the subject matter of the decision in Dattatraya vs. Lakshman 33 Bom. L.R. 1419. In that case the Bombay High Court held that the grant was not a Devasthan but was personal grant. The real point is that no obligation has been attached to the grant. The grant does not state that the grantee must perform certain duties. In the absence of such recitals, the grant does not state that the grantee must perform certain duties. In the absence of such recitals, the grant would be held to be a personal inam and is not liable to be resumed. This view is supported by the conclusion arrived at by the Civil Judge under the Bombay Public Religious Trust Act that it is not a case of a public

Contd.

religious trust.

2/12.

Memorandum of LEGAL Affairs.

U.O. to R.D. No. 10419, dated the 4th December 1951.

Pl. also see p. 7 ante.

MK

56. dated 30-5-'56.

4/6

SMA
4/6.